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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 175 OF 2015

1] Mr. Darshan Bharat Churiwala
2] Mr. Vinod Kumar Madanlal Goel ..Applicants

Vs

1] Mr. Sanjiv Ramesh Sharma
Since deceased through legal heir Ms. Surbhi Sanjiv
Sharma (Daughter)
2] State of Maharashtra ..Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 225 OF 2016**

Ms. Surbhi Sanjiv Sharma
(Daughter and legal heir of late Sanjiv Ramesh Sharma) ..Applicant

Vs

1] Twenty First Century Wire Rods Ltd.
2] Darshan Bharat Churiwala
3] Vinod Kumar Madanlal Goel
4] State of Maharashtra ..Respondents

**ALONG WITH
CRIMINAL APPLICATION NO. 240 OF 2016
IN
CRIMINAL REVISION APPLICATION NO. 175 OF 2015**

Ms. Surbhi Sanjiv Sharma
(Daughter and legal heir of late Sanjiv Ramesh Sharma) ..Applicant

In the matter between:

1] Mr. Darshan Bharat Churiwala
2] Mr. Vinod Kumar Madanlal Goel ..Applicants

Vs

1] Mr. Sanjiv Ramesh Sharma
Since deceased through legal heir Ms. Surbhi Sanjiv
Sharma (Daughter)
2] State of Maharashtra

..Respondents

AND
CRIMINAL APPLICATION NO. 257 OF 2019
IN
CRIMINAL REVISION APPLICATION NO. 175 OF 2015

Smt. Nirmal Sanjiv Sharma
(Wife and legal heir of late Sanjiv Ramesh Sharma)

..Applicant

In the matter between:

1] Mr. Darshan Bharat Churiwala
2] Mr. Vinod Kumar Madanlal Goel

..Applicants

Vs

1] Mr. Sanjiv Ramesh Sharma
Since deceased through legal heir Ms. Surbhi Sanjiv
Sharma (Daughter)
2] State of Maharashtra

..Respondents

WITH
CRIMINAL APPLICATION NO. 413 OF 2019
IN
CRIMINAL REVISION APPLICATION NO. 175 OF 2015

1] Mr. Darshan Bharat Churiwala
2] Mr. Vinod Kumar Madanlal Goel

..Applicants

Vs

1] Mr. Sanjiv Ramesh Sharma,
Since deceased through Legal Heir Ms. Surbhi Sanjiv
Sharma (Daughter)
2] State of Maharashtra

..Respondents

**WITH
CRIMINAL APPLICATION NO. 425 OF 2019
IN
CRIMINAL APPLICATION NO. 240 OF 2016**

1] Mr. Darshan Bharat Churiwala
2] Mr. Vinod Kumar Madanlal Goel

..Applicants

Vs

1] Ms. Surbhi Sanjiv Sharma
(Daughter and legal heir of late Sanjiv Ramesh Sharma)
2] State of Maharashtra

..Respondents

Mr. Ram Mani Upadhyay for Applicants in Revn.Appln.No.175 of 2015 and Criminal Application Nos.413 of 2019 and 425 of 2019 and for Respondent Nos.1 to 3 in Revision Appln.No.225 of 2016 and for respondents in Criminal Application Nos.240 of 2016 and 257 of 2019.

Mr. Subhash Jha alongwith Mr. Harekrishna Mishra and Ms. Sanjana Pardeshi i/b M/s Law Global Advocates for respondent No.1 in Reven.Application No.175 of 2015 and for Applicant in Revn.Application No.225 of 2016 and for applicant in Criminal Application Nos.240/2016, 257/2019 and for respondent No.1 in Criminal Application Nos.413 and 425 of 2019.

Mr. R.M. Pethe, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 30th September 2019.

P.C.:

1] In pursuance of Order dated 13th September 2019 passed by the Honourable Supreme Court in Special Leave to Appeal (Cri.) No.8133 of 2019, aforestated Criminal Revision Applications along with connected Criminal Applications are taken up for final hearing.

2] Heard Mr. Upadhyay, the learned counsel for applicants/original accused in Revision Application No.175 of 2015 and respondent Nos.1 to 3 in Revision Application No.225 of 2016, Mr. Jha, the learned counsel for the respondent No.1/Original Complainant late Mr.Sanjiv Ramesh Sharma in Revision Application No.175 of 2015 and Applicant in Revision Application No.225 of 2016 and Mr. Pethe, the learned APP for the State. Perused the entire record and proceedings.

3] For sake of brevity, the parties herein will be termed as per their original designation before the Trial Court i.e. the applicants in Revision Application No.175 of 2015 will be termed as “applicants/accused persons” and the respondent No.1 namely Late Mr. Sanjiv Ramesh Sharma will be termed as “original complainant”. The original accused No.1 is a Company namely “Twenty First Century Wire Rods Ltd.” and Mr.Darshan Bharat Churiwala and Mr. Vinod Kumar Madanlal Goel are the accused Nos.2 and 3 respectively.

4] By the Revision Application No.175 of 2015 filed under section 397 of Cr. P.C., the original accused Nos.2 and 3 have questioned the correctness, legality and propriety of the Judgment and Order dated 4.4.2015 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Appeal No.624 of 2014, dismissing the said appeal, thereby confirming the Judgment and Order dated 7.8.2013 passed by the learned Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai in C.C. No.54/SS/2013, convicting the applicants/accused

under section 138 of the Negotiable Instruments Act (for short the N.I. Act).

Criminal Revision Application No.225 of 2016 is filed by Ms. Surbhi Sanjiv Sharma, Daughter and legal heir of late Sanjiv R. Sharma (original complainant) for enhancement of sentence imposed by the Trial Court and upheld by the Appellate Court.

Criminal Application No.257 of 2019 is filed by Smt. Nirmala Sanjiv Sharma, wife and legal heir of late Sanjiv R. Sharma (original complainant) for direction to the accused persons to deposit amount mentioned therein and for withdrawal of the said amount.

5] Criminal Application No.240 of 2016 is filed by Ms. Surbhi Sanjiv Sharma, daughter and legal heir of original complainant for directions to deposit the amount to be paid to the complainant by the accused. This Court by its Order dated 23rd August 2019 has passed certain directions to the Applicants/accused persons and to deposit an additional sum of Rs.2,40,00,000/- (Rupees Two Crores and Forty Lakhs) in the Registry of this Court within stipulated period mentioned therein, failing which this Court would consider to vacate interim relief granted by Order dated 22.4.2015 and to direct the Trial Court to execute conviction warrant in pursuance of Judgment and Order dated 7.8.2013.

The said Order dated 23.8.2019 passed by this Court was challenged by the Applicants/accused persons before the Honourable Supreme Court by way of Special Leave to Appeal (Cri.) No.8133 of 2019. The Honourable Supreme

Court by its Order dated 13th September 2019 granted four months time to the applicants/accused persons to comply with the Order passed by this Court, to deposit the said additional amount in the Registry of this Court. The Honourable Supreme Court further directed this Court to take up the Criminal Revision Petition no.175 of 2015 alongwith connected matter at an early date and dispose of the same.

In pursuance of said Order dated 13th September 2019 passed by the Honourable Supreme Court, aforestated Criminal Revision Applications along with connected Criminal Applications are taken up for final hearing.

6] The aforestated Revision Applications alongwith connected Applications were initially fixed for final hearing on 20th September 2019. However, due to non-availability of this Court in the second session on 20.9.2019, the present matters were adjourned to 23.9.2019 at 3.00 p.m. for hearing. On 23.9.2019, it was submitted that, the Advocate on record for the Applicants/accused persons in Revision Application No.175 of 2015 was in personal difficulty and unable to attend the Court and therefore the said Revision Applications were adjourned to 24.9.2019. On 24.9.2019, the learned counsel for the applicants in Revision Application No.175 of 2015 submitted that, the record and proceedings in the present matter was not received by this Court and in absence of R. & P. hearing of the present Revision Applications may not be concluded. In view thereof, the Registrar (Judicial-1) of this Court was directed to

call for Record and Proceedings of the present case from the file of the Appellate Court. Today the Registry has put up a note that, the said Record and Proceedings are received by the Registry.

7] The record reveals that, a complaint bearing No.54/SS/2012 under section 138 of the Negotiable Instruments Act was instituted in the Court of Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai by the complainant namely Shri Sanjiv Ramesh Sharma on 15.1.2013 against the applicants/accused persons. It is the precise case of the complainant that, the complainant was one of the Directors of M/s Ashapuri Jain Land Developers Pvt. Ltd. The complainant was having right, title and interest in a piece of land admeasuring about 5.46 acres lying and situate at Harihara, Hallapur, District Davanagere, State of Karnataka. That the complainant entered into a Deed of Assignment dated 7.9.2012 with the applicants, wherein the applicants agreed to purchase the said piece of land admeasuring 5.46 acres on “as it is where it is basis” for a total consideration of Rs.5.00 Crores. At the time of execution of the said Deed of Assignment, the accused No.3 paid cash of Rs.11.00 lakhs to the complainant towards part of its consideration and discharge of lawful liability. That, in pursuance of the said Deed of Assignment, the accused persons issued in all five cheques in favour of the complainant totally amounting to Rs.4.50 Crores. The said cheques were bearing (1) No.997226 dated 17.9.2012 of Rs.50,00,000/-, (2) No.997221 dated 1.10.2012 of Rs.1,00,00,000/-, (3) No.997225 dated

15.10.2012 of Rs.1,00,00,000/-, (4) No.997224 dated 2.11.2012 of Rs.1,00,00,000/- and (5) No.997223 dated 21.11.2012 of Rs.1,00,00,000/-. The said cheques were issued towards discharge of their liability arising out of the said Deed of Assignment. The accused No.2 (Applicant No.1) was the signatory of the said cheques. The accused Nos.2 and 3 were the Director and Chairman respectively of the accused No.1 Company. However, the said cheques were dishonoured on presentation for the reason “insufficient funds” as per the memo from the concerned bank. The complainant thereafter issued a Demand Notice dated 5.12.2012 under section 138 of the Negotiable Instruments Act to the accused persons. The accused persons received it, however, failed to pay the amount as was demanded by the complainant. That the applicant No.2/original accused No.3 sent a Notice dated 20.11.2012 to the complainant making certain allegations against him. As the accused persons failed to comply with the Demand Notice, the complainant was left with no other alternative, but to file a complaint which in fact he did, by filing the complaint bearing No.54/SS/2012 in the Court of the Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai under section 138 of the Negotiable Instruments Act.

8] After receipt of Notice, the accused persons appeared before the Trial Court, pleaded not guilty and claimed to be tried. In due course of time, the complainant filed affidavit of evidence. The accused persons were granted substantial opportunity to cross examine the complainant and to bring on record

evidence in support of their case. It appears from the record that, the accused persons have availed the said statutory right available to them. The Trial Court after recording the evidence and after hearing the parties to the complaint, by its Judgment and Order dated 7.8.2013 convicted the applicants/accused person for the offence punishable under section 138 of the Negotiable Instruments Act and sentenced them to suffer simple imprisonment for three months each. The accused persons were also ordered to pay compensation under section 357(3) of Cr.P.C. jointly and severally to the tune of Rs.4,90,00,000/- (Rupees Four Crores Ninety Lakhs Only) to the complainant.

9] Feeling aggrieved by the Judgment and Order dated 7.8.2013 passed by the Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai, the applicants/accused preferred an Appeal bearing No.624 of 2014 in the Court of Sessions, Greater Mumbai. The Appellate Court after reappreciating the entire evidence available on record and after hearing the parties, dismissed the said appeal by its Judgment and Order dated 4.4.2015.

10] Mr. Upadhyay, the learned counsel for the applicants/accused persons submitted that, perusal of the impugned Judgment and Order dated 4.4.2015 would indicate that, the Appellate Court has failed to reappreciate the entire evidence available on record and proceeded to dismiss the said appeal, predominantly on the ground that, the applicants/accused persons failed to comply with the terms of the Consent Terms filed before the said Court by them.

He further submitted that, even prior to issuance of Demand Notice under section 138 of N.I. Act by the complainant, the applicant No.2/original accused No.3 had in fact sent a notice dated 20.11.2012 (Exh.39) to the complainant pointing out the fact that, the title of the land in question is defective and the complainant had no authority to sell and/or assign the suit land in favour of the accused persons. He submitted that, as the complainant could not give clear marketable title to the accused persons, the accused persons were not obliged to honour the cheques issued by them. He submitted that, the complainant failed to perform his part of obligation in delivering a clear marketable title and therefore the accused persons did not make further payment as per the cheques issued by them. He further submitted that, as per the defence adopted by the accused persons, the said cheques were given towards advance payment for consideration of the piece of land mentioned hereinabove and in view of the defective title which was noticed by the accused persons, the said cheques were not honoured and therefore the provisions of section 138 of the N.I. Act are not attracted to the present case. In support of his contention, he relied on the decision of the Supreme Court in the case of M/s Indus Airways Pvt. Ltd. & Ors. Vs. M/s Magnum Aviation Pvt.Ltd & Anr (in Criminal Appeal No.830 of 2014). He therefore prayed that, the Judgments and Orders passed by both the Courts below may be quashed and set aside, thereby acquitting the accused persons from the offence punishable under section 138 of the Negotiable Instruments Act.

11] Per contra, Mr. Jha, the learned counsel for the respondent No.1/original complainant vehemently opposed the application and submitted that, the stand adopted by the accused persons since inception of the complaint till this date is totally dishonest. He submitted that, since the date of execution of the Deed of Assignment dated 7.9.2012, the applicants/accused persons were having malafide intention of cheating the complainant and in furtherance of their said intention, they issued cheques in favour of the complainant, when they were fully aware of the fact that, on presentation the said cheques would be dishonoured. He further submitted that, the Deed of Assignment dated 7.9.2012 is an elaborate document wherein it has been categorically stated about assigning and handing over the suit land to the accused persons on “as it is where it is basis” and therefore the contention of the applicants/accused that, the complainant failed to give clear marketable title has no substance in it. He further submitted that, the scope of the Revision under section 397 of Cr. P.C is very limited. In support of his contention, he relied on the decision of the Supreme Court in the case of State of Orissa Vs. Nakula Sahu & Ors., reported in (1979) 1 SCC 328. He submitted that, both the Courts below have not committed any error in appreciating the evidence on record. He therefore prayed that, the Revision preferred by the applicants/accused persons may be dismissed.

12] At the outset, a useful reference can be made to the decision of the Honourable Supreme Court in the case of State of Orissa Vs. Nakula Sahu & Ors.

(supra). The Supreme Court while dealing with the scope of Revision under Section 439 read with 435 of Cr. P.C. 1898 (old Code) has observed that, it is now well settled that, normally the jurisdiction of the High Court under section 439 is to be exercised only in exceptional cases wherein there is glaring defect in the procedure or there is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice. That the power being discretionary, it has to be exercised judiciously and not arbitrarily or lightly. That judicial discretion, as has often been said, means a discretion which is informed by tradition, methodised by analogy and disciplined by system.

The Honourable Supreme Court recently while enumerating the scope of Revision under section 397 of Cr. P.C. (new Code), in the case of *The State Of Gujarat vs Afroz Mohammed Hasanfatta* reported in AIR 2019 S.C. 2499, has held that, the High Court does not sit as an appellate court and will not reappreciate the evidence unless the judgment of the lower court suffers from perversity.

13] It is to be noted here that, a bare perusal of the cross-examination of the complainant taken by the applicants/accused persons would clearly indicate that, the complainant has denied all the suggestions of accused persons. The accused persons have clearly failed to bring on record any admission from the complainant that, the complainant ever agreed to give clear and marketable title of the suit land to them. The evidence on record clearly indicates that, the Deed

of Assignment dated 7.9.2012 mentions that, the accused persons had agreed to purchase the suit land admeasuring 5.46 acres on “as it is where it is basis”. It is an admitted fact on record that, the applicants/accused persons had issued the cheques in question towards discharge of their lawful liability in furtherance of the Deed of Assignment dated 7.9.2012. It is also absolutely clear from the record that, the complainant has established his case beyond reasonable doubt and has proved that, the accused persons have committed the offence in question. The record further clearly discloses that, the applicants/accused have failed to rebut presumption as contemplated under section 118 read with 139 of the N.I. Act.

The record further reveals that, this Court while allowing the Criminal Application No.760 of 2014 filed by the applicants, had granted liberty to them to file an application for recording evidence under Section 391 of Cr.P.C. at appropriate stage in Appeal No. 624 of 2014 by its Order dated 15.1.2015. The record further indicates that, in pursuance of Order dated 15.1.2015, applicants/accused filed an application for leading additional evidence however they did not lead any evidence and therefore they have waived their right bestowed by this Court by its Order dated 15.1.2015.

14] It further clearly appears that, the Trial Court after taking into consideration all the necessary and relevant evidence available on record, has passed the Judgment and Order dated 7.8.2013. That, the Appellate Court has reappreciated the entire evidence available on record and confirmed the said

Judgment and Order dated 7.8.2013 passed by the Trial Court. The record indicates that, the accused persons had filed Consent Terms dated 20.8.2013 before the Appellate Court for securing bail from the said Court. That the accused persons have failed to honour the clauses of the said Consent Terms and therefore the Appellate Court by observing the same, passed the impugned Judgment and Order dated 4.4.2015 dismissing the appeal preferred by the applicants/accused bearing No.624 of 2014.

A minute perusal of the Judgments and Orders of the Trial Court and the Appellate Court would clearly indicate that, there is no defect in the procedure adopted by the Courts below, least to say any glaring defect or manifest error on a point of law which has resulted in flagrant miscarriage of justice. The Judgments of the lower Courts also do not suffer from any perversity.

15] After perusing the impugned Judgments and Orders passed by the Courts below, this Court is of the considered view that both the Courts below have not committed any illegality or impropriety while passing the said Orders. There cannot be second opinion that, the applicants/accused persons are guilty of offence punishable under section 138 of the Negotiable Instruments Act and therefore the conviction of the applicants/accused persons is upheld.

16] This leads me to consider the Revision Application No.225 of 2016 filed by Ms. Surbhi Sanjiv Sharma, daughter and legal heir of late Mr.Sanjiv Sharma (original complainant) for enhancement of sentence imposed by the Trial

Court and upheld by the Appellate Court.

While canvassing the point for enhancement of sentence, Mr. Jha the learned counsel for the complainant submitted that, the applicants/accused on three occasions had filed Deed of Settlement or Consent Terms; the first before the Company Law Board on 16.4.2013, then before the Trial Court on 17.4.2013 and lastly before the Appellate Court on 20.8.2013. He submitted that, the accused persons never honoured even a single term of the said Consent Terms. That with a view to protract the litigation and to enjoy the bail granted initially by the Trial Court and subsequently by the Appellate Court, the accused persons submitted the said Consent Terms/Deed of Settlement before the Courts below. He submitted that, during the pendency of the appeal, the original complainant has expired and now the litigation is being pursued by the legal heirs of the complainant. He submitted that, the facts mentioned by this Court in Order dated 23.8.2019 in Criminal Application No.240 of 2016 are correctly recorded. He submitted that, taking into consideration the utter dishonesty of the applicants/accused persons, sentence imposed by the Trial Court is wholly inadequate and the same needs to be enhanced to have deterrence in the minds of the accused persons. He therefore submitted that, the sentence imposed by the trial Court may be enhanced and maximum sentence as contemplated under Section 138 of the N.I. Act be awarded. He therefore prayed that, the Revision Application No.225 of 2016 filed by the legal heir of the original complainant be

allowed in its entirety.

17] The record reveals that, the complainant had filed complaint on 15.1.2013. That during the pendency of Criminal Appeal No.624 of 2014 preferred by the applicants/accused persons, the original complainant/Mr. Sanjiv R. Sharma expired on 31.3.2014 and now the legal heirs of the complainant are pursuing the present applications. The record discloses that, on 16.4.2013 the applicants/accused persons lured the complainant to file Deed of Settlement before the Company Law Board, however, the terms of the same were never acted upon by the applicants/accused in its proper perspective. That the accused persons thereafter filed Consent Terms on 17.4.2013 before the Trial Court, giving undertaking and admitting their liability in its totality to the tune of Rs.4,50,00,000/- (Four Crores Fifty Lakhs Only), however the said Consent Terms were also never acted upon by the applicants/accused persons. That in the Appellate Court, with a view to secure an Order of bail, the applicants/accused persons filed further Consent Terms dated 20.8.2013. The said Consent Terms were also not acted upon by the applicants/accused.

Thus it is apparent that, the applicants/accused not only took undue advantage of the situation which was being faced by the complainant, but also took various Courts below for a ride by filing such Consent Terms before it. It further appears that, the applicants/accused failed to respect their own statements/undertaking given before various Courts of the land and have shown

scant respect to it. The record further reveals that, out of the total compensation awarded by the Trial Court of Rs.4,90,00,000/- (Four Crores Ninety Lakhs Only), the applicants/accused persons have paid only Rs.2,50,00,000/-(Two Crores Fifty Lakhs Only) to the complainant under the Orders of Court and rest of the amount is yet to be paid by them. After taking into consideration the conduct of the accused persons mentioned hereinabove, this Court is of the considered view that the sentence imposed upon the applicants/accused persons is wholly inadequate and needs to be enhanced.

18] I have heard Mr. Upadhyay, the learned Counsel for the applicants/accused on the point of enhancement of sentence. Mr. Upadhyay submitted that, the applicants/accused are young and there are no antecedents at their discredit. He submitted that, the sentence imposed upon by the Trial Court is adequate and needs no further enhancement. He therefore prayed that, the said Revision No.225 of 2016 may be dismissed.

19] As noted in the forgoing paragraphs, the conduct of the applicants/accused aggravates the situation and makes them liable and imperative on the part of this Court to enhance the sentence imposed upon them.

In view thereof, this Court is of the considered view that, the sentence imposed upon the applicants/accused by the Trial Court needs to be enhanced and is accordingly enhanced.

20] In view of the above, Order of sentence of the Trial Court dated

7.8.2013 is hereby modified and the applicants/original accused Nos.2 and 3 are sentenced to suffer simple imprisonment for one year each.

21] Taking into consideration the mental agony faced by the complainant at the hands of the applicants/accused and the efforts put in by the heirs of the complainant in pursuing the present litigation, I am inclined to enhance amount of compensation from Rs.4,90,00,000/- (Rupees Four Crores Ninety Lakhs Only) to Rs.6,50,00,000/- (Rupees Six Crores Fifty Lakhs Only). The applicants/accused persons will get benefit of amount already paid by them.

The balance amount of compensation be paid by the applicants/accused persons to the applicant in Revision Application No.225 of 2016 within a period of four weeks from the date of uploading of this Order on the High Court Website.

In default of payment of compensation amount within stipulated period mentioned above, the applicants/accused persons to further undergo simple imprisonment for one year.

22] The Trial Court is directed to issue conviction warrant against the applicants/accused persons immediately after receipt of the present Order.

23] Criminal Revision Application No.175 of 2015 preferred by the original accused Nos.2 and 3 is accordingly dismissed.

Criminal Revision Application No.225 of 2016 preferred by Ms. Surbhi Sanjiv Sharma, daughter and legal heir of late Sanjiv Ramesh Sharma

(original complainant) is allowed in the aforesaid terms.

24] In view of Orders passed in Criminal Revision Application Nos.175 of 2015 and 225 of 2016, Criminal Application Nos.240 of 2016, 257 of 2019, 413 of 2019 and 425 of 2019 do not survive and the same are accordingly disposed off.

All the concerned to act on authenticated copy of this Order.

(A.S. GADKARI, J.)